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July 27, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: In the matter of the Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming - MB Docket No. 04-227

Dear Secretary Dortch:

Following review of the submissions made by the New Jersey Board of Public Utilities in the above captioned matter, it has come to my attention that the version contained in the Electronic Comment Filing System has the incorrect attachment. Instead of the Board's April 14, 2004 report on the Status of Video Competition in New Jersey, a copy of the Commission's Notice of Inquiry is included in the filing system.

If it would be possible, the Board would respectfully request that the attached report on the Status of Video Competition in New Jersey replace the Notice of Inquiry currently included as the Board's submission.

If you have any questions, please do not hesitate to contact me. Thank you very much for your consideration in this matter.

Sincerely yours,

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

By: Kenneth J. Sheehan
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Deputy Attorney General

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April 14, 2004

RECEIVED
JUL 29 2004
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Governor James E. McGreevey
125 W. State Street
P.O. Box 001
Trenton, New Jersey 08625

Dear Governor McGreevey:

Today, the BPU accepted and adopted a report conducted by our Office of Cable Television studying multi-channel video competition in the State pursuant to legislation you signed into law sponsored by Senator Codey. New Jersey's 2.5 million cable subscribers have enjoyed the strongest overall customer rights regulation and rate scrutiny in the nation, but it is clear from this report that more must be done. We, at the Board, are committed to improve the quality of service and rates for New Jersey cable consumers.

The Board of Public Utilities' Report on "The Status of Multi-channel Video Competition in New Jersey" is enclosed. This Report provides the necessary background to begin to examine key areas in which cable and other multi-channel video providers do business in the State. In addition to studying the four areas required by law, the Board hosted a public hearing on February 26, 2004 on the issues covered by the Report.

We welcome the opportunity to explore these areas in greater depth and to share our expertise with you and Senator Codey, as you make decisions about how to best serve the State.

Sincerely,

Jeanne

Jeanne M. Fox
President

C: Richard J. Codey, Senate President
Albio Sires, Assembly Speaker
Leonard Lance, Senate Minority Leader
Alex DeCroce, Assembly Minority Leader
Senate Commerce Committee
Assembly Telecommunications and Utilities Committee

New Jersey Board Of Public Utilities

REPORT TO THE GOVERNOR AND LEGISLATURE

THE STATUS OF MULTI-CHANNEL VIDEO COMPETITION INNEW JERSEY

PUBLIC LAW 2003, Chapter 38

April 14, 2004

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GLOSSARY

Bandwidth: A range of frequencies in the broadcast spectrum that is occupied by a signal. (For example, a television channel may have a bandwidth of 6 MHz.) The "necessary bandwidth" is the amount of spectrum required to transmit the signal without distortion or loss of information. Commission rules require suppression of the signal outside the band to prevent interference.

Broadband: Broadband is a descriptive term for evolving digital technologies offering consumers a single switched facility with integrated access to voice, high-speed data services, video-demand services and interactive information delivery services. Broadband also is used to define an analog transmission technique for data or video that provides multiple channels. A cable TV system, for example, employs analog broadband transmission. (See Bandwidth).

BSP: Broadband Service Providers – carriers utilizing transmission facilities, usually coaxial cable, that have a bandwidth (capacity) greater than a voice grade line of 3 kHz. These facilities may carry numerous voice, video and data channels simultaneously with each channel using a different frequency on the cable.

CATV: Cable Television – A service through which subscribers pay to have local television stations and additional programs brought into their homes from a distribution source via a coaxial cable.

CLEC: Competitive Local Exchange Carrier – A company certified to offer local telephone service in competition with the regional Bell companies and other incumbent telephone carriers.

Coaxial Cable: A type of cable, commonly used in cable television systems, composed of two concentric conductors: an inner wire and an outer braided sleeve.

Common Carrier: A quasi-public provider of services to the public at large. A telephone company is a common carrier; a cable company is not.

Clustering: A strategy employed by cable companies to concentrate or increase the size of their cable system properties in key markets. The goal of clustering is to gain economies of scale in local markets to best leverage capital expenditures and maximize operating efficiencies, service deployment and marketing.

DBS: Direct Broadcast Satellite (Small Dish) – A TV broadcast service from a small satellite dish antenna that offers services similar to cable TV, and which transmits highly compressed digital signals.

DSL: Digital Subscriber Line – (also ADSL, VDSL) – A modem technology that provides greater bandwidth from ordinary telephone lines.

DTV: Digital Television – Television signals transmitted and received in digital format using electrical or electromagnetic signals that can be modulated to convey specific content. The TV picture is often in the same ratio as movie screens and may have up to 1,080 lines of resolution, producing a crisper picture.

Enhanced Service Providers: A company that transmits data messages and simultaneously adds value to the message it transmits. Examples include telephone answering services, alarm/security companies and transaction processing companies.

Facilities-Based TelecomCompany: A telecommunication carrier that owns call switching equipment and transmission lines.

FCC: Established by the Communications Act of 1934, the Federal Communications Commission is the federal agency in charge of overseeing interstate telecommunications as well as all communications services originating and terminating in the United States.

Federal Preemption: A legal theory triggered when the United States Constitution or Congress expressly provide exclusive power to the Federal government in a particular field and supplant state authority; or when the Federal intention to do so may be inferred from a pervasive system of regulation which does not leave a sufficient vacancy within which the state can act. A state many not pass any law inconsistent with the federal law when pre-emption controls.

Fiber Optics: A method for the transmission of information (sound, video, data) in which light is modulated and transmitted over high purity, hair-thin filaments of glass. The bandwidth capacity of fiber optic cable is much greater than that of copper wire.

FTC: The Federal Trade Commission is an agency of the Federal government created in 1914, whose principal functions are to promote free and fair competition in interstate commerce through prevention of general trade constraints, such as price-fixing agreements, false advertising, illegal combination of competitors, and other unfair methods of competition.

FTTH: Fiber to the Home refers to the installation of fiber optic wires in the "last mile" between the telephone central office and the home.

Hertz (Hz): A unit of frequency commonly used to measure speeds of transmissions equal to one cycle per second (cps); One kilohertz (kHz) equals 1000 cps; one megahertz (mHz) equals 1 million cps; one gigahertz (gHz) equals 1 billion cps.

HSD: Home Satellite Dish (Large Dish) – A home receiver that permits the consumer to receive existing satellite transmissions.

ILEC: Incumbent Local Exchange Carrier – a term used to refer to the Regional Bell Operating Companies (RBOCs) who provide local exchange service.

Internet: A worldwide computer network that links the user to businesses, government agencies, universities, and individuals. The Internet provides computers with the ability to connect with other computers for communicating, disseminating and collecting information.

Interoperability: The ability of software and hardware from multiple vendors to communicate effectively; the ability of systems or units to provide, accept and use services from other systems or units.

ITFS: Instructional Television Fixed Service – A service provided by one or more fixed microwave stations operated by an educational organization and used to transmit instructional information to fixed locations.

IXC: Interexchange Carrier – A long distance telephone company linking separate local exchanges.

kHz: Kilohertz – see Hertz (Hz).

LMDS: Local Multipoint Distribution System – A wireless cable system that enable greater upstream bandwidth that most other wireless services from a fixed station for entertainment video and CLEC services.

Modem: An abbreviated term for "modulator de-modulator." A modem converts digital signals into analog signals (and vice versa), enabling computers to send and receive data over traditional telephone networks.

MMDS: Multi-channel Multipoint Distribution System – A wireless cable service using microwaves to transmit multiple television signals to customers.

MSO: Multiple System Operator – A major cable TV organization that has franchises in multiple states.

OCTV: Office of Cable Television – the regulatory arm of the Board of Public Utilities, the franchising authority, certified by the FCC to regulate basic rates, technical standards, and customer service obligations of cable TV operators for the State of New Jersey.

OVS: Open Video System – similar to a cable system, but in return for less regulatory oversight, the system operator must lease channel capacity to unaffiliated programmers at just, reasonable, and non-discriminatory rates.

PEG: Public Educational & Governmental Access – channels set aside by a cable operator for use by the public, educational institutions and local governments unaffiliated with the operator.

POTS: Plain Old Telephone Service – basic telephone service which originates from lines connecting most residential and small business users to the public telephone network.

PSTN: Public Switched Telephone Network – the common domestic telecommunications network that is accessed by private branch exchange trunks, telephones and Centrex systems to carry phone calls from end to end.

RBOC: Regional Bell Operating Company – (also BOC) – any one of the seven local telephone companies that were created in 1984 as part of the break-up of AT&T: Ameritech (now SBC), Bell Atlantic (now Verizon), Bell South, NYNEX (now Verizon), Pacific Telesis Group (now SBC), Southwestern Bell (now SBC) and U. S. West (now Qwest).

SMATV: Satellite Master Antenna Television – small-scale, private cable system using a central rooftop antenna to serve the TV sets in an apartment building, hotel, or multiple dwelling unit.

Vertical Integration: The degree to which a firm owns its upstream suppliers and downstream buyers is known as vertical integration. It affects cost, product differentiation, marketing and other strategic issues, and is an important factor in a firm's strategic and competitive position within an industry.

UNE: Unbundled Network Element – components of a telecommunications system that are leased to competing carriers at wholesale rates, including local loops, OSS, and local and tandem switches.

VDSL: Very-high bit rate DSL – see DSL.

VoIP: Voice over Internet Protocol – a service that allows a user to make telephone calls using an Internet connection instead of a regular phone line.

EXECUTIVE SUMMARY

While multi-channel video competition is increasingly robust in New Jersey as a result of greater direct broadcast satellite ("DBS") penetration, competition among cable operators remains stagnant. Over 2.5 million New Jerseyans subscribe to traditional cable television ("CATV"), while 12% of the aggregate multi-channel video subscribers select a DBS company rather than a traditional cable company.[1] Consumers can choose among cable TV, DBS, the Internet, and even MobiTV, a service that offers television viewing on a cell phone.[2] A recent Federal Communications Commission ("FCC") report found that Americans enjoyed more choice, more programming, and more services than at anytime in our nation's history.[3] As of June 2003, 94.1 million households subscribed to some form of multi-video channel programming, showing an increase of over 56% in the past 10 years.[4] Moreover, cable television now reaches almost 70.5 million subscribers nationwide.[5]

Despite these varied technology options and the existence of seven cable companies in the State of New Jersey, approximately 92% of the State's subscription cable customers are served by Comcast or Cablevision.[6] This dominance by two companies - neither of which is in direct "head to head" competition with the other - leads to questions whether New Jersey is a truly competitive market producing the lowest possible prices for its residents.[7]

The New Jersey Board of Public Utilities ("BPU" or "Board") has focused this Report on the subjects of Public Law 2003, Chapter 38, issues specific to New Jersey as they relate to multi-channel video competition. The law directs the BPU to examine specific areas of video competition, all of which either implicitly or explicitly address the question of the status of multi-channel video competition in New Jersey. Before examining those areas, however, one must consider how New Jersey differs from other states in its regulation of cable television.

New Jersey is a unique state with respect to cable regulation. Normally the duties of the local franchising authority are handled individually by each municipality in which a cable operator seeks to offer service. In New Jersey, however, statutes have placed full regulatory authority over cable television companies with the BPU. Only six other states regulate in a similar manner: Connecticut, Hawaii, New York, Massachusetts, Vermont, and Rhode Island.

Cable operators - including Comcast, the largest operator in the State - have repeatedly acknowledged that New Jersey's regulatory framework is superior to other states. In response to the FCC's Inquiry of the Status of Competition, WVT Communications - a competitor to cable television companies - wrote: "The (second) example of regulatory anti-competitive behavior is the delaying tactics employed by the [New York Public Service Commission] and in the approval

[1] Written comments of the New Jersey Cable Telecommunications Association ("NJCTA") by Karen Alexander, President, March 8, 2004 at p.4, n.6.
[2] USA Today, February 11, 2004.
[3] *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 03-172, 31 Communications Reg. (P&F) 700, F.C.C., released January 28, 2004 (hereinafter, "*FCC Tenth Annual Report on Video Competition*").
[4] *Ibid.*
[5] *Ibid.*
[6] Board of Public Utilities, Office of Cable Television, 2004 Cable Facts.
[7] Written comments of Christopher White, New Jersey Division of the Ratepayer Advocate, Public Hearing, In the Matter of the Status of Broadband Telecommunications and Multi-Channel Video Programming Competition in New Jersey, February 26, 2004 (noting absence of choice and competition in cable) at p.3.

process of a Cable TV franchise with a [local exchange carrier]. A comparison of the competitive-friendly nature of the BPU in New Jersey will demonstrate..." Further, WVT states: "The major difference between New York and New Jersey is that New Jersey has taken a positive stance in regards to promoting competition in the video marketplace...."[8]

New Jersey's hospitable regulatory environment stems from the BPU's scrutiny of all would-be competitors and the protection it brings for both incumbent cable operators and consumers. Pole attachment agreements, for example, negotiated by the Board, enabled 99% of the State to be wired for cable television service by the late 1980s. The favorable aspects of reporting to one agency - as opposed to 562 franchising authorities and city attorneys - are significant. Chief among those is the BPU's role as the local franchising authority and ultimate arbiter for disputes between the cable operator and the municipalities.

Centralized jurisdiction also benefits the companies in avoiding the cost of having different rates set for each of the municipalities it serves, and facing different rules governing their operations. Under the current framework, companies set a single rate on a broader system-wide basis. The agency has implemented an optional expedited rate procedure which avoids the need for costly litigation and rewards cable companies with quick resolution of rate cases where little or no increase occurs in the basic rates. Further statutory ground rules for sales, mergers and acquisition give cable operators a more predictable means of financing their ventures.

The expert knowledge of the industry and the single set of laws which govern avoid some of the frivolous litigation cable operators face in other states or the requirement that they abide by different customer service requirements in each municipality they serve. The right to access provided under New Jersey's statutes also allows cable operators unfettered entry into private communities. Likewise, class action suits, which have been filed in more than half of the states, are avoided with the Board because it has primary jurisdiction over cable company operations.

These benefits make New Jersey an ideal place to provide multi-channel video services – and a rich environment in which to consider the questions posed by the Legislature with respect to competition.

Part I–The State Of Competition

"The state of multi-channel video programming competition between different facilities-based and non-facilities-based telecommunications companies in New Jersey, such as cable television companies, digital broadcast satellite companies, local exchange telecommunications companies and interexchange telecommunications carriers and, in particular, the state of competition in New Jersey among the dominant cable television companies for the same customers"

- Head-to-head competition of cable vs. cable and DBS vs. DBS is less relevant in the eyes of the FCC than all forms of multi-channel competition measured against each other.

- Wireline competition among video providers in New Jersey is sparse. Four towns in New Jersey have some facilities based competition (Paramus/Hillsdale has cable v. cable while West Milford and Vernon has telco v. cable).

[8]Hometown Online, Response to Notice Of Inquiry Into The Status of Competition in the Marketplace For The Delivery Of Video Programming, FCC CS Docket #02-145 (August 13, 2002).

- Competition to cable in New Jersey and the rest of the country is primarily from DBS; between 10-15% of subscribers in New Jersey and 21% in the country choose DBS over cable.

- Four towns, Allamuchy, Montague, Sandyston and Toms River, have been found to satisfy the FCC's definition of "effective competition" upon a finding that DBS penetration is at least 15%. This effective competition declaration decreases the level of regulatory control the BPU may exert. These findings are paid for by the cable operators and have withstood challenges by the BPU. Consequently, more than three dozen New Jersey towns are awaiting possible findings of effective competition and the subsequent rate deregulation at the FCC.

- While cable and DBS have comparable programming, the existence of both in a town does not seem to produce downward pressure on rates.

Part II--Technical And Regulatory Barriers

"The technical and regulatory issues associated with promoting multi-channel video programming competition in New Jersey by local exchange telecommunications companies and interexchange telecommunications carriers."

- There are no outright prohibitions or exclusions to telephone companies entering the video market; however, various state requirements may be viewed by some parties as impediments.

- While technical barriers to providing video over telephone lines are few, the expense of upgrading the existing infrastructure significantly impedes the offering of video services by local exchange carriers.

- Local exchange carriers like Verizon have strong incentives to provide video in order to replace the revenues they are losing to long-distance and wireless telephone companies.

- Verizon indicates it may deploy in the short-term a technology called Fiber to the Home ("FTTH"), which would allow for video, voice and data services. While the technology is expensive to deploy, it could be the ultimate solution for competition to incumbent cable operators if and when it emerges.

Part III--Internet as Telecommunications Service

The technical and regulatory issues associated with classifying every high-speed Internet service as a "telecommunications service," as defined in section 2 of P.L.1991, c.428 (C.48:2-21.17).

- The rate regulation of high speed Internet services has mostly been preempted by federal regulations; the FCC continues to encourage a "hands-off" regulatory policy on these services in an effort to spur their development and deployment at greater levels.

- The classification of these services as telecommunications under current New Jersey law does not necessarily equate to providing the Board the ability to regulate their rates. Most likely, these services would be deemed "competitive services," and would not be subject to the traditional rate regulatory provisions now reserved for only a small number of protected services.

ξ Cable modem service was designated an interstate information service by the FCC in 2002;, that decision, however, was vacated in October 2003 by the Ninth Circuit Court of Appeals in the *Brand X* decision.

ξ DSL service has been tentatively designated an information service with a telecommunications component by the FCC, although technical constraints continue to delay deployment of DSL service by incumbent local exchange carriers ("ILECs"), and competitive issues restrain the ability of competitive local exchange carriers ("CLECs") to offer the service on as a wide a scale as seen with the deployment of cable modems.

Part IV--Non-Discriminatory Access

"A requirement that a cable television company shall provide its competitors non-discriminatory access to the CATV company's cable communications system."

ξ Issues in this area arise in two contexts: (1) Access for multi-channel video programming service providers, which could be characterized as non-facilities based marketers or packagers of programming, and Internet service to the cable operator's lines in competition with its own product offerings; and (2) Programmer access to the service packages sold by the franchised cable operator to its customers.

Multi-channel Video Provider Access

State requirement to provide access would be problematic for a number of reasons, some of which parallel the arguments for and against access for Internet Service Providers discussed elsewhere in this Report.

ξ State and local authority over cable is limited to specific matters and actions expressly delegated in the federal Communications Act, as amended in 1984, 1992 and 1996.

ξ Open access as applied in the telecommunications industry is a poor model for cable. Antecedents in statute, business models, and nature of the product are very different than those in telecommunications.

ξ Broadcast or satellite signals are not as readily distinguishable or separable into interstate or intrastate, as has been the historical case of point to point telephone calls.

Programmer Access

There are three types of access primarily available over cable systems, which enable non-affiliated programmers access to channel space in the cable systems service packages.

ξ *Leased access* laws require channel capacity to be made available to programmers to purchase time and/or channels. It includes an FCC-administered process for protecting the rights established for programmers and for insuring the programmers are charged fair rates. The dominant program content under this framework is infomercials.

ξ *Non-Operator Affiliated Access* is designed to keep cable operators from favoring affiliated programming services or channels delivered over satellite This has been an issue in New Jersey with respect to regional sports programming. The premier example of this conflict was the battle between Cablevision and the YES Network, which carries regional sports programming (Yankees and Nets) in competition to regional sports teams and programming affiliated with Cablevision. The matter was settled through arbitration, but the agreement expires this year.

ξ *Public, Educational, And Governmental Access Channels* are determined on the municipal level through the franchise process in New Jersey. There are no statewide requirements, and the local arrangements vary widely. Occasional disputes concerning these channels are handled by the Office of Cable Television on a case by case basis.

PART ONE: THE STATE OF COMPETITION

"The state of multi-channel video programming competition between different facilities-based and non-facilities-based telecommunications companies in New Jersey, such as cable television companies, digital broadcast satellite companies, local exchange telecommunications companies and interexchange telecommunications carriers and, in particular, the state of competition in New Jersey among the dominant cable television companies for the same customers"

PART ONE: THE STATE OF COMPETITION

The vast majority of competition in multi-channel video programming competition nationally occurs between CATV companies who represent about 75% of the market and DBS companies that represent about 15.4% of the market.[9] Satellite Master Antenna ("SMATV"), which claims 1.8% of the national market, or 1.5 million subscribers, uses the same technology as cable but does not cross the public rights-of-way. OVS represent less than 1% of the national market. These technologies – as well as Internet Video and Video on Demand – are discussed below.

Cable Television: An Overview

Seven cable television operators franchised by the BPU provide services to about 2.5 million residents, covering all but two of the state's 566 municipalities. Consolidation and clustering of systems by Comcast and Cablevision has left most systems in the state with contiguous service territories.

Comcast presently ranks as the largest cable television operator in both New Jersey and the nation. It provides service to 1.4 million households, or 55% of the State's cable television customers. Areas served range from Jersey City and parts of Essex County, some central areas, including Trenton, and throughout the entire southern half of the State. The system is fully upgraded and now offers digital and Internet service in all parts of its service territory.

Cablevision serves about 950,000 homes (37% of all the state's cable homes) in large parts of the northern and central regions of the State. With its completion of rebuilds and upgrades last year, digital and Internet service is now available to all Cablevision customers who want it. Internet based phone service over the system has been offered in its Tri-state systems since late last year.

Patriot serves about 80,000 customers in the central part of New Jersey. It is a company formed by a long-time cable entrepreneur specifically to acquire the two systems in New Jersey formerly operated by RCN Corporation, in 2003.[10] Since taking over these systems, Patriot has been completing the rebuilding and upgrading of the plant and service offerings, including two way high speed Internet service.

Despite being the nation's second largest cable television operator, Time Warner has only 60,000 New Jersey customers, with all of its franchises located in Bergen County and the Town of Guttenberg in Hudson County. Through its state of the art system, Time Warner offers a full range of TV programming, digital and Internet services.

Service Electric Cable TV, one of the oldest cable companies in the country, covers Sussex County and parts of Warren, Morris, and Hunterdon counties. Rates for its 53,000 homes in those communities are not regulated due to its classification under Federal law as a small system operator. Internet service is not available until completion of planned upgrades in the system.

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[9] The FCC notes in its Tenth Annual Report that ten years ago cable served approximately 100% of all the nation's MVPD subscribers, but in 2004 cable's share had fallen to approximately 75%. This decrease, among other factors, led the FCC to conclude that "competition" exists in the industry due to the decrease in cable's dominance.

[10] RCN Corp. is currently in negotiations to restructure its debt and will likely announce a corporate reorganization through Chapter 11 bankruptcy. See www.rcntomorrow.com for current information.

U.S. Cable serves 5,600 customers in Hillsdale and Paramus, in direct competition with Cablevision. U.S. Cable's corporate parent is based in Montvale, New Jersey. U.S. Cable, which had previously sold its systems in New Jersey, re-entered the New Jersey market in 1999, when it purchased the Hillsdale-Paramus system from Cablevision, which had to divest the system under the FTC's order approving Cablevision's acquisition of a large number of TCI systems around the country. As a small system, none of U.S. Cable's rates can be regulated.

Hometown Online, a cable television subsidiary of WVT (formerly Warwick Valley Telephone) received certification by the Board in 2002 to provide cable TV service in Vernon (Cablevision) and West Milford (Service Electric) townships, each of which was already served by franchised operators. The parent company has provided telephone service as an incumbent local exchange carrier since 1903. This system utilizes VDSL technology over its telephone plant to offer a bundled package of TV, Internet and telephone services. As of January 1, 2004, Hometown Online had 777 customers for a penetration rate of 16%. As both a small system and one found subject to effective competition by the FCC, Hometown's cable television rates are unregulated.

Cable Competition in New Jersey

A handful of laws and regulations have had the greatest impact on cable competition in New Jersey: the Federal Cable Act,[11] the 1972 State Cable Act,[12] the 1992 Cable Television Competition and Consumer Protection Act, the 1996 Act and the current FCC's "Effective Competition" rules.

Of these, the FCC's "effective competition" rules have the greatest impact on New Jersey consumers. The "effective competition" rules set by the FCC govern whether or not DBS is deemed a competitor to the cable business. There are four criteria that govern whether or not the "effective competition" standards apply. Of the four criterion only one seems relevant today in New Jersey: the "50-15" test. The "50-15" test means 50% availability and 15% penetration of comparable technology and services in the same geographic area.

Once the "effective competition" threshold is reached, the cable companies in those areas are exempt from rate regulation. Therefore, this is the most important factor in determining whether DBS is deemed a competitor to cable for the purposes of rate regulation of cable companies. The FCC has already declared four New Jersey towns subject to Effective Competition (Allamuchy, Sandystone, Montague and Toms River, Verizon's sole entry into the video market nine years ago) and thus all cable rates, including the basic tier and equipment rates charged there, are unregulated. It is under this test that scores of New Jersey municipalities face deregulation. Currently more than three dozen petitions await the FCC's effective competition determination.[13] Therefore, the success

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[11] A franchise is required by the Federal Cable Act in order for a company to supply cable television service. 47 U.S.C.A. § 541. The franchising process for cable television operators in the State is governed by both federal and State law and regulation.

[12] Under N.J.S.A. 48:5A-1 et seq., cable television franchises are non-exclusive. The federal 1992 Cable Television Competition and Consumer Protection Act prohibited the awarding of exclusive franchises by local franchising authorities. In addition, the Telecommunications Act of 1996 allowed telephone and electric companies to enter the subscription TV market. Finally, the Effective Competition rules which indicates when basic cable rates are deregulated for certain municipalities, which are not otherwise deregulated, determines when markets are "competitive" at the local level.

[13] Towns include: Avon-by-the-Sea, Brielle, Bogota, Closter, Colts Neck, Creskill, Englishtown, Franklin Lakes, Garfield, Freehold, Haledon, Howell, Interlaken, Kinnelon, Manalapan, Manasquan, Marlboro, Millstone, Neptune, Ocean, North Caldwell, Old Tappan, River Vale, Rochelle Park, Rockleigh, Prospect Park, Saddle River, Sea Girt, South Hackensack, South Orange, Upper Freehold, Upper Saddle River, Wall, West Paterson, Wood-Ridge, Woodcliff Lake, Jackson, Washington, Old Bridge, Sayreville, Aberdeen, Manville, Bound Brook, Green Brook, Raritan, South Bound Brook, Warren, Spring Lake and Union Beach.

of DBS under the FCC rules plays a huge role in how cable competition is perceived and the application of the definition may create a "gap" between consumer expectation and market reality.

The FCC, in its Tenth Annual Report on Competition issued in January of 2004, states that competition often results in added channel offerings for the same monthly rate, improved services or additional non-video services. Federal regulators and consumers, however, have different definitions of competition. To some consumers, "competition" may mean companies that compete head-to-head in the same geographic area for the same customers in the same categories of service. To others, "competition" simply means the greatest range of programming and Internet services available for the highest quality at the lowest prices. In either case, the BPU has challenged the premature debut of deregulation as early as 1995 and formally challenged "Effective Competition" rules in a legal brief in 2002. The FCC's operative definition of "effective competition" is a service area in which multi-channel video programming available to at least half the households in a franchise come from at least two unaffiliated providers offering comparable video programming.

The BPU previously challenged the FCC's exclusive reliance on Sky Trends – now the function of SBCA (successor to Sky Trends) – as the basis for measuring and deregulating local markets. Neither the data nor the method by which they count households can be validated. The FCC Bureau Chief stated, in March 2004, that any major policy shifts at the agency in defining effective competition was unlikely. Therefore SBCA will continue to be relied upon for DBS penetration without independent third party verification because the FCC says it is unable, with its current resources, to challenge these unaudited measurements.

Furthermore, as this Report will show, the effective competition rules do not necessarily stabilize cable prices. In addition, the apparent absence of "head-to-head" competition in New Jersey tends to undermine consumer confidence, where consumers assume head-to-head competition is necessary to produce the lowest prices among their cable providers. A General Accounting Office ("GAO") study found that where cable operators faced competition from overbuilders, the overbuilder's prices tend to be lower than the incumbent's. In New Jersey, a customer typically has only the choice of one cable provider or one DBS provider in the customer's geographic area. This contributes to why some consumers feel they have little "choice" when it comes to selecting a service provider. Further, the lack of government control of two-thirds of the competitive tiers and programming services prices fuels the dissatisfaction.

Both the Ratepayer Advocate and the League of Municipalities (the "League") have questioned whether "competition" exists in New Jersey, especially under the standards used by the FCC. The League states:

> Here in New Jersey, there is no effective competition in the CATV market. Although such competition is permitted, as a practical matter it does not occur. Choosing satellite or over-the-air broadcasts are alternatives; however, they do not offer competition.[14]

[14] Statement of Albert Licata, Bernards Township Deputy Mayor; Chair, League of Municipalities Telecommunications Task Force, Public Hearing, In the Matter of the Status of Broadband Telecommunications and Multi-Channel Video programming Competition in New Jersey (February 26, 2004).

Based on the results of our February 26, 2004 public hearing, it seems apparent that these rules do not promote competition as either consumers or providers expected. As such, the federal "Effective Competition" rules need to be re-evaluated by the FCC to determine their impact on local markets.

There are seven municipalities in the state where "competition" exists: two from competing traditional cable operators and four from competing industries. In Bergen County, Paramus and Hillsdale have, from the late 1970s, had two cable operators franchised to serve both municipalities. In Sussex and Passaic Counties, Hometown On Line, an affiliate of a small ILEC, WVT Communications, provides competition to incumbent cable operators SECTV and Cablevision in the towns of Vernon and West Milford respectively. Lastly, in Passaic County and Warren County, Cablevision provides unregulated service in the towns of Montague , Sandystone and Allumuchy. These towns in 2002 were deemed subject to effective competition and therefore removed from rate regulation upon the FCC's acceptance of DBS penetration figures in excess of the 15% threshold.

The Office of Cable Television has expedited wireline competitors' applications to "overbuild" incumbents in our State and opposed applications from cable operators who wish to declare competition from DBS companies because, as discussed below, the cable industry's exclusive access to the measurement tool for DBS penetration, Sky Trends, puts regulators and subscribers at a disadvantage.

<u>Factors that Affect Competition</u>

A number of technical factors affect the success or failure of cable competition in New Jersey, including the need for capital-intensive wiring. Due to the need to invest in a duplicate infrastructure, which is expensive, not every potential competitor can enter, let alone sustain competition in the cable market. The historic challenges, both financial and technical, as noted by the FCC, as well as New Jersey's own previous experience with overbuilders, attests to the impracticability of certain overbuild models. In the early 1990s, Shore Cable, after a few short years of limited service in the Atlantic City area as an overbuilder, sold its system to the rival cable operator. Bell Atlantic exited the Video Dialtone competitive model in Dover Township (Toms River) in the late '90s after engaging in a price war with the incumbent Adelphia for two years.

Cable operators are subject to more regulatory oversight than DBS competitors but there is little room for state action with regard to pricing by DBS companies. Some states have considered legislation to tax these providers. The cable companies would invite that action of leveling the playing field since the cable industry is subject to franchise fees as well as other state taxes.

Consumers consider a number of factors when selecting among cable providers or alternative services, such as DBS. The number of channels available, system reliability, and video quality, especially in rebuilt systems, all cause consumers to favor the cable operator over other alternatives in many instances. In addition, cable's ability to deliver telephone and high speed internet services, as well as its PEG access channels at a local and regional level and the ability to engage in simultaneous viewing and recording also make cable the most popular choice among consumers. While the NJCTA estimates overall penetration of DBS in the State is between 10-12%, it also argues in some areas it can exceed 20%. Further, if Verizon begins offering DirectTV packaged with its own telecommunication services, it could boost penetration higher.

Pricing is one of the major components that affect the ability of providers to compete for customers. Cable's ability to bundle services make this business model well positioned to compete with other providers for the same services such as local exchange carriers. According to the FCC's Tenth Annual Report, the cable industry invested more than $75 billion to upgrade its cable plant, resulting in the introduction of non-video services such as Internet access and telephony.[15] While it is unknown how much the industry has actually invested in the State in this regard, arguably cable operators' investment has spurred further development and new business initiatives by rival providers, as evidenced by the alliance of Verizon and DirectTV. In addition, cable offers an increasing range of services and added customer service support, some of which are now legislatively required. Although cable companies state that these requirements increase costs, it can also be argued that this higher level of service may help to solidify a customer base estimated to be between 69% and 84% in the State.

Notwithstanding the increase in competitive services as defined by the FCC, cable rates on unregulated tiers have also risen. In New Jersey, cable programming service tier rates have risen 12% between 2002 and 2003. During the same time period, cable prices rose 5.1% overall compared to a 2.1% increase in the overall CPI. The price differences between cable and DBS will be detailed below. Even with the growing discontent with cable price increases, it may not be profitable for an alternate provider to compete in this manner as discussed in the cable rates section, which may explain why cable companies do not overbuild and compete head-to-head. The economics of construction and operation present "considerable challenges" including raising funds to replicate the capital-intensive networks already established by the cable operator."[16]

In addition to traditional cable, one such alternate provider is broadband service providers ("BSPs") who compete with existing cable systems using state of the art systems that bundle telecommunications services including voice, video, and high speed Internet access.[17] According to the NJCTA, New Jersey has the fifth highest number of broadband subscribers, nearly one million, and the high-speed lines include five DSL providers, five providers of high-speed cable, and 13 satellite and fixed wireless system providers. These satellite and fixed wireless system providers serve almost 1.4 million subscribers nationally, and include providers such as RCN, the largest (460,000 subscribers), followed by WideOpenWest (290,000 subscribers) and Knology (130,000 subscribers).[18] Still, while this broadband business model is not able to compete with cable for all of its service offerings, companies that do not provide the "triple play" of voice, video and data are now partnering with companies that can provide services they do not and forming marketing and business alliances to provide these services.

According to some critics, foreign deregulating of telephone companies, and the associated decrease in the regulatory structure, has had a huge impact on the development of broadband as a competitor to cable. According to one statistic, 73% of South Korean households subscribe to high speed Internet, whereas only 18% of U.S. households subscribe to a broadband service, despite the service being available to 89% of U.S. households.[19] The NJCTA submits that 23% of the State's population subscribe to one of the 17 broadband service providers in the State, while such services are available to 95% of the State's residents. In foreign countries such as Korea and Japan, with deregulated phone systems, and with dense urban populations, faster forms of DSL and some limited forms of fiber-to-homes options have been available. Therefore, in a real sense, "competition" deals directly with the question of national policy and regulation, which will be

[15] *FCC Tenth Annual Report on Video Competition*, at p. 8.
[16] *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 03-172, 18 FCC Rcd. 16,042, released July 30, 2003 (hereinafter, "*FCC Ninth Annual Report on Video Competition*").
[17] *Ibid.*
[18] *FCC Tenth Annual Report on Video Competition.* It should be noted that Knology filed for Chapter 11 bankruptcy protection in September, 2002 and WideOpenWest filed for Chapter 11 bankruptcy protection in February, 2004.
[19] "Broadband: What's the Hold-Up?" Businessweek, March 1, 2004, pp 38-39.

discussed in Part II of the Report.

Direct Broadcast Satellite

DBS services were introduced in 1993, and presently have 21.63%[20] of the nation's multi-channel video programming service customers. Among the reasons DBS is considered competitive to cable is its growth rate. According to the FCC, since DBS's introduction, the DBS growth rate has exceeded the growth rate of cable by double digits in every year except the past year, when DBS growth exceeded cable growth by 9.16%. The total number of DBS households grew 11% between June 2002 and June 2003, with 2.2 million additional households subscribed to DBS.[21] Direct TV ranks second next to Comcast in total video programming customers nationally. During the past two years, there have been a number of attempts by media companies, including Cablevision, to acquire a DBS company. A merger attempt between EchoStar and DirecTV came apart under federal regulatory and Congressional opposition in 2002. Approximately 12% of subscribers to a multi-channel provider in New Jersey select a DBS company.[22]

Hughes (doing business as DirecTV) had 11.6 million customers by mid 2003, making it the second largest multi-channel programming provider in the country. After the EchoStar merger failed, the FCC conditionally approved acquisition of a 34% interest in Hughes by News Corp., owner of the Fox Entertainment Group.

EchoStar (doing business as the DISH Network), which also serves the New Jersey market, has 8.8 million customers nationwide, and ranks as the fourth largest multi-channel video programming provider.

Rainbow DBS (doing business as Voom) which was introduced in October, 2003, is an affiliate of Cablevision and uses a new spot beam technology which the company expects to allow delivery of more localized programming and broadcast channels. No customer data was available during the drafting of this report.

<u>DBS Competition in New Jersey</u>

There is little federal oversight of DBS providers and states are pre-empted from any rate regulation that affects DBS. While the 12-15% market penetration in New Jersey is below the national average of 21%, DBS remains the most prominent delivery service outside of cable. As discussed above, the FCC effective competition rules have a pronounced effect on the cable industry, the main competitor to DBS. The "effective competition" rules set by the FCC govern whether or not DBS is deemed a competitor to the cable business, and whether or not "competition" exists between cable and DBS providers.

The DBS industry has been unwilling to provide information on penetration. The best estimates are based on data from SBCA. Without this information, and where no true competitors are offering the same service, in the same market, by the same delivery model, consumers may not perceive "choice" between video providers. Therefore, the "choice" in New Jersey may be somewhat illusory to the consumer. These differences in assumptions and beliefs not only explain the "gap" between consumer expectations and attainable market choices, but also explains why the FCC's regulation of this market has been deemed a failure by many of its critics.

[20] *FCC Tenth Annual Report on Video Competition*, ¶ 8.
[21] *Ibid.*, ¶16.
[22] Written comments of NJCTA, p.4, n.6.

Factors affecting DBS competition

The absence of local franchising fees, PEG access commitments and service obligations are examples of the competitive regulatory advantages DBS enjoys over cable. One common complaint of the cable industry is that they are competing with DBS on an "unlevel playing field" because DBS is not regulated.

Some of the key distinguishing features of DBS that make it attractive for consumers are its number of channels – ranging above 500 – and its audio and video quality based on its digital capability. In addition, interactive and video on demand services have proven to attract customers. As technology improves, the dish size which receives the service also decreases, making the technology less cumbersome and more adaptable. Finally, DBS service offers a plethora of regional sports packages, though it also can involve more expensive up front costs. In most markets, the service packages offer comparable or lower program rates than cable with ongoing promotional campaigns.

The down-side, from a consumer perspective, includes the up front costs which can be more expensive, and contracts which tend to be long term. The service can also be subject to signal fade in certain weather, as well as digital artifacts and "noise." Also, because there is no state regulation of DBS, there is little inherent consumer protection, and the BPU does not monitor complaints about service problems or enforce customer service requirements.

A comparison of rates between Cable and DBS follows at the conclusion of this section.

SMATV

SMATV systems, also known as "private cable," often serve hotels and motels, apartment buildings, hospitals and private residential communities. They do not use the public rights-of-way[23] and therefore are neither subject to franchises or other requirements of the State Cable Act, nor fall within the BPU's jurisdiction. Since they are not registered with the State, records are scarce. This industry has a 1.8% share of the national market.

Although no precise data on the number of complexes in New Jersey has been provided, the potential market for these private systems encompasses about 500,000 units in mobile home parks and in complexes with ten or more units. The NJCTA provides 2000 census figures that state 35.1% of housing units in the state are multi-unit structures. [24]

SMATV Competition in New Jersey

There are an unknown number of unfranchised "private" cable systems in New Jersey and throughout the country operating outside of the jurisdiction of the BPU or individual municipalities, and they are not required to register with the OCTV. It is only through customer complaints that these systems are identified to the OCTV, at which time a technical investigation is initiated to ensure the system should not be regulated as a cable system under State and federal law.

There have been a number of uncontested conversions of SMATVs over the course of the years, and often the private cable systems are purchased by the incumbent operator and certified as part of the approval process for asset purchases under the State Cable Act. Currently, there is one

[23] 47 U.S.C.A. § 522(7).

[24] Written comments of NJCTA, p.5.

contested certification, where, pursuant to the Board's regulatory jurisdiction over cable television systems, the BPU found that RCN Telecom Services, Inc., in serving the residential multi-dwelling units known as the Newport complex in Jersey City, was using the public right-of-way such that its SMATV system was operating as a cable system subject to BPU regulation. The ruling by the Board that RCN must obtain a cable television franchise pursuant to N.J.S.A. 48:5A-1 et seq. is being challenged in the Superior Court, Appellate Division in Docket No. A-6422-02T3.

Factors Affecting SMATV competition

This service may offer long-distance and Internet access, with a varying number of channels. There is less regulation in this area than cable and no regulatory fees. This service is offered to a limited subscriber base consisting almost exclusively of multi-dwelling units. It also offers no local PEG access channels, but has lower prices. These services vary widely in the sophistication of the services offered, and many fall short of the systems offered by cable providers. For example, Covered Bridge in Manalapan is served by a Master Antenna service operated by Cablevision which provides only 12 channels.

Open Video Systems

This technology involves a facility consisting of a set of transmission paths and associated signal reception and control equipment that is designed to provide cable service to multiple subscribers within a community. An OVS operator must open its "platform" to other programmers. Part II of the Report provides a more detailed description of OVS.

Other Technologies

Wireless Television

The term "wireless" is an umbrella name for several types of technology involving microwave TV signals emitted from transmission tower used to provide microwave based TV signals to a relatively local area, extending approximately 30 miles from a given transmission tower. Subscribers to wireless television comprise approximately 3% of the national market.

Originally, this technology was used as part of the Instructional Television Fixed Service ("ITFS"), which was created for educational purposes such as the local transmission of college courses to students unable to attend classes at a centralized location for various reasons. The technologies employed in wireless TV include MMDS or conventional wireless, and Local Multipoint Distribution Service ("LMDS"), a new type of service offering with a shorter range, which employs cellular transmission technologies. With just under a million subscribers signed up since the first MMDS system became operational in the 1970s, wireless has generally not been received well by the public, due to both real and perceived limitations. Systems are, however, able to achieve profitability with lower market shares due to lower start up and capital costs. Recent trends suggest that this technology is upgrading its network to offer two-way communications (i.e. Internet).[25]

Internet Television

Internet Video allows for access to the Internet over a television using a set-top box and Web TV or Worldgate Service Packages, resulting in a convergence of the traditional home television set and computer. Web TV uses a wireline Internet connection via a phone line to a

[25] *FCC Ninth Annual Report on Video Competition.*

computer like box and keyboard, with the TV set as a monitor. With the migration to flat screen, LCD or plasma televisions and computer monitors, the two devices will likely evolve into one within the next few years. At present, video pictures offered over the Internet are less than broadcast quality and the medium is not truly a direct competitor to providers of traditional television video services.

Video On Demand

A common complaint to the Office of Cable Television from customers is that they are forced to buy programming channels in packages, and must pay for channels they do not necessarily want. Video on Demand offers a solution.

Customers now want what they want, when they want it. Comcast cited "changed customer tastes" as the basis for its Philadelphia trial of its "video on demand" services. Half the cable subscribers whom participated in the trial used the "video on demand service" and viewed an average of 13 movies per month. Digital recorder boxes are now being introduced which add a VCR like recording function to the increasingly sophisticated cable TV box. This service requires the cable operator to establish licensing arrangements with the broadcast channel or programming provider, so it is not yet available for all channels.

Direct Video Downloads

While as noted above, the quality of video motion pictures offered over the Internet is not broadcast quality, it is improving as Internet capacity and speeds improve. A new business model is now emerging in the audio music industry as a result of the success of ventures such as Apple Computer's iTunes music distribution system, wherein individual songs and entire albums are sold directly to the individual customer over the Internet. This will profoundly affect the current packaging and distribution of television programming, much in the way recording retailing and distribution of music is being affected by the Internet. In this sense, the market is responding to customers demands for choice, and if the recording industry holds as a model, price as well. How quickly this development expands to video and voice services depends on the speed and capacity of the Internet and cable operators and telecommunications provider networks.

Electric and Gas BSPs

While the New Jersey video market cannot claim any entry by electric and gas utilities into the video programming market, a few scattered systems across the country include Potomac Electric and Power Company (PEPCO) in Washington D.C. that offers voice, video and data services as "Starpower," a joint venture between the utility and RCN. PEPCO announced it was seeking to sell its interest in the project the same day RCN announced it would file for Chapter 11 re-organization bankruptcy protection. These projects do not make use of electric power lines for distribution but do make use of their rights of way through poles and conduits.

The FCC's 10th Annual Report on the Status of Competition in the Market for Video Programming state that electric BSPs continue to provide competition in "scattered localities" and often in rural areas where cable operators may not provide advanced telecommunications services. Municipalities, in some cases, provide broadband services to their own residents in mostly unserved areas. Kutztown, Pennsylvania, for example, built a fiber loop in 1999 hoping that the private sector would step in and provide voice, video and data service but was forced to offer the services themselves when no one from the private sector appeared. Similarly, in locations like Cedar Falls, Iowa, the municipality has built a broadband access network offering voice, video and data services.

The FCC report also states that the American Public Power Association ("APPA") surveyed its members at the end of 2002, finding that 511 public power entities offer some kind of broadband services. Of those, 105 offered video services, 71 offered cable modem service and 37 offered local telephone service.[29]

Several electric utilities are also exploring the use of their existing power lines to provide broadband service. This new platform, Broadband over Power Line ("BPL") has sparked significant interest around the country, and prompted the recent release of a Notice of Proposed Rulemaking ("NPRM") by the FCC, which proposes changes to certain technical rules in an effort to foster broadband deployment using the significantly untapped capabilities of the nation's power grid, while safeguarding existing electric service against harmful interference.[30]

Current Video Market Rate Structure

<u>Rate Structure Explanation: Video Service Providers v. Cable Service</u>

As of February 29, 2004, the average monthly charge for basic cable service in the State was approximately $12.67. In most cable systems, subscribers also must pay for equipment associated with the provision of basic service. If subscribers wish to expand the programming they receive, they can expect to pay, on average, an additional $31.98 for an expanded basic tier. Moreover, premium channels can be added on an á la-carte basis, or in a package deal, for an additional charge, which would vary from system to system. Cable television subscribers are not required to purchase equipment in order to receive service, nor are subscribers required to enter into lengthy contracts for the provision of such service. Subscribers have the option each month to either continue their service or to cancel.

The most popular alternative to cable service available to New Jersey residents is DBS. Services such as DirecTV or Dish Network offer subscribers a vast selection of programming, up to 200 channels, received by way of satellite dishes installed at the subscriber's home. While the costs for these services vary from company to company, they tend to fall between $24.99 and $33.99 for a minimum programming package, without local channels, or $29.99 and $38.99 including local channels where available.

In order to receive certain discounts, DBS subscribers must enter into contracts, which bind them to that service for a designated number of months or years, and agree to early termination or liquidated damage payments for cancellation before the term. Subscribers to DBS must also pay a

[29] APPA Public Power: Powering the 21st Century with Community Broadband services (fact sheet) May 2003.

[30] Notice of Proposed Rulemaking, *In the Matter of Carrier Current Systems, including Broadband over Power Line Systems*, ET Docket No. 03-104; *Amendment of Part 15 regarding requirements and measurement guidelines for Access Broadband over Power Line Systems*, ET Docket No. 04-37, released February 23, 2004.

substantial amount of money for the purchase or rental of the satellite dish in addition to the amount for installation, although some installation charges are waived and certain other upfront equipment costs are credited to customer accounts in exchange for longer term subscription agreements.

In order to receive DBS service, customers must purchase or rent a satellite dish, a DBS receiver box, and depending on the type of satellite dish and number of receivers used, a switch. It is a recent practice to offer free equipment and installation as a marketing strategy for the service. Generally, there are three types of satellite dishes available, which vary according to their ability to receive signals from single or multiple satellites and to connect to a single or multiple receiver boxes. The most basic packages now include a satellite dish that allows up to 4 receiver boxes to be connected. Since it requires only a single coaxial cable to connect between the dish and each receiver, it is relatively simple to install.

According to our on-line research, current promotions are available that offer professional installation free for basic DBS systems and include multiple sets, the first 3 (DirecTV) or 4 sets (Dish Network). Unlike DirecTV, however, Dish Network has also begun offering some promotions that do not require minimum subscription plans. Like cable television, the programming available for DBS services varies greatly, and each company offers different packages, ranging from 60 channels to 200 channels.

COST COMPARISON OF CABLE TELEVISION AND ALTERNATE VIDEO PROVIDERS

DBS

SERVICE	BASIC PACKAGES	PRICE	EQUIP*	INSTALL**
DirecTV***	115–195+Channels	$33.99-$87.99	$99	$0
Dish Network***	60–180+Channels	$24.99-$77.99	$0	$0

-versus-

CABLE+

Average Basic Service Tier Rate		$12.67
Average Cable Service Tier Rate		$31.98
Average Channel Capacity:		
Basic Service Tier	27	
Cable Service Tier	44	

Average Primary Installation Charge $44.21++

Average Equipment Charge

	Non-Addressable	Addressable	Digital
Converters	$0.52	$3.50	$4.02

Residential

HDTV Gateway+++	DVR

	$8.08	$4.70	$8.00
	Standard	Digital	
Remotes	$0.21	$0.20	

Notes:

* DirecTV offers up to 3 receivers (converter) for a one-time cost of $99, additional receivers may be added at a cost of $49 each. The DirecTV agreement carries a $150 early termination fee for early disconnection, and a $150 liquidated damage fee for each receiver not activated within 30 days of installation. Dish Network does not charge for equipment, but some plans require the customer to pay upfront system costs between $149 and $199 that are refunded in 15 or 20 month credits of $10 each. Other Dish Network plans without an upfront equipment payment require the customer to a $5.00 per month rental fee per receiver (converter).

** DirectTV offers free professional installation as part of its standard package for up to 3 sets; a forth set can be added at the time of initial installation for a $40 charge. Free installation requires purchase of annual programming contracts. Dish Network offers free professional installation as part of its standard package for up to 4 sets, but assesses a $49 system activation charge that is credited back on the customer's first bill.

*** DirecTV and Dish Network offer additional a la carte offerings and packages for Movies, Sports, Adult programming and local broadcasts as well as pay-per-view movies and events. (Local broadcast packages range from $5-$6 per month for ABC, CBS, NBC, FOX and PBS, certain package pricing includes local channels at a slight discount).

+ Information as of February 29, 2004 and includes Unregulated Systems.

++ Cable companies regularly offer free or reduced priced service installations as part of new subscriber or subscriber service upgrade promotions.

+++ Applicable to VDSL Service. One Gateway device required for up to 3 sets.

Facilities Based Competition

Until recently, there had only been three instances of head-to-head facilities based competition in New Jersey since the arrival of cable television in the Garden State. In the late 1970s, two cable television companies received municipal consent to build simultaneously in two towns—Paramus and Hillsdale. This dual build consists of co-located distribution systems, allowing each company to market to the other company's subscribers and persuade them to switch providers and choose their service. While this model offers a means of true competition, the results have not been indicative of real competition, to the extent that price wars have not occurred, and no major competitive marketing efforts were ever undertaken by either company. After Cablevision's acquisition of TCI's New Jersey systems, under a ruling by the Federal Trade Commission ("FTC"), Cablevision sold the TCI system in both towns to U.S. Cable. U.S. Cable now operates a stand-alone system covering the two towns.

In general, it does not appear that facilities based competition by two cable companies offering only video services has been profitable enough for either company to continue to compete in this manner for an extended period of time. The FCC reports that only 1.5% of all MVPD customers nationwide are overbuilder subscribers. It seemed therefore unlikely that direct competition between traditional franchised types of cable systems other than those established early on, like in Hillsdale and Paramus, would develop. Notwithstanding the unlikely expansion of cable wireline competition, it still appears that facilities based competition between a LEC and cable operator remains a significant possibility, and is in fact occurring today. Warwick Valley Telephone Company ("WVT"), through its operating subsidiary Hometown Online, Inc., offers head to head competition with the incumbent cable companies (Cablevision and Service Electric Cable TV respectively in Passaic County and Vernon Township in Sussex County.) Using VDSL digital technology, WVT offers voice, video and data services over its existing twisted pair telephone network, providing 98 digital video channels. As noted above, Verizon, while not currently offering competitive video services in the State, has announced plans to begin testing a broadband alternative that would challenge traditional video systems which would extend fiber directly to the customer's home to offer speeds that are many times greater than what existing DSL and cable modems can deliver today.

Following is a comparison of rates in the only current competitive situations in our state:

Cable v. Cable

Company	BST Rate	CPS Rate	Monthly Charge	Install Charge	Converter Charge	Remote Charge
Cablevision/Oakland						
Rebuild	$11.30*	$35.95	$47.25	$46.95	$4.07	$.27
US Cable (Hillsdale and Paramus)						
$13.50	$29.99	$43.49	$44.95	$1.56/$3.13	$.31	

*Includes $1.42 system rebuild add-on